

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KAZUHIRO YAMADA,
HIROSHI YAMAGISHI,
KAZUNORI MATSUDA,
KOUICHI MINAMI,
ISAO NAGATA,
YOSHIYASU TAGAWA,
KAZUAKI UMI,
and
HITOSHI TERASHIMA

Appeal No. 1998-2502
Application No. 08/525,007

ON BRIEF

Before KRASS, FLEMING, and BLANKENSHIP, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1 through 29. Claims 30 through 41 have been withdrawn as being drawn to a nonelected invention.

The invention pertains to jukeboxes. More particularly, a control system in the jukebox transfers a data storing device between a carriage and a magazine, and between the carriage and a drive unit, and the control system retries the transfer if a misalignment occurs during an initial attempt. When a detecting means detects that the data storing device is not transferred in a prior attempt, the control means controls the carriage to displace the carriage from a reference position to a new position along a conveying path and the data storing device is transferred again.

Independent claim 1 is reproduced as follows:

1. A jukebox apparatus comprising:

a magazine having a plurality of slots for
accommodating data storing devices therein;

a drive unit having a slot for receiving a selected
data storing device;

conveying means including a carriage for conveying a
data storing device between the magazine and the drive
unit along a predetermined conveying path, the carriage
having device transferring means for transferring the data
storing device between the carriage and the magazine and
between
the carriage and the drive unit;

detecting means for detecting whether the data
storing device is transferred or not;

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and

control means responsive to said detecting means for controlling said carriage and said device transferring means such that the data storing device is transferred when said carriage is conveyed to a reference position in front of one of the magazine and the drive unit, and when said detecting means detects that the data storing device is not transferred in a prior attempt, the carriage is displaced from said reference position to a new position along said predetermined conveying path and the data storing device is transferred again.

The examiner relies on the following reference:

Numasaki	5,001,582	Mar. 19,
1991		

Claims 1-12 stand rejected under 35 U.S.C. § 102(b) as anticipated by Numasaki, while claims 13-29 stand rejected under 35 U.S.C. § 103 as unpatentable over Numasaki.

Reference is made to the briefs and answer for the respective positions of appellants and the examiner.

OPINION

We reverse.

We agree with the examiner that Numasaki discloses a system similar to the instant invention wherein the automatic changing of an information storage medium is effected. Numasaki discloses a magazine having slots for accommodating

data storing devices and a drive unit for receiving a selected data storing device. Numasaki also discloses conveying means including a carriage for conveying a data storing device between the magazine and the drive unit, as well as transferring means for transferring the data storing device between the carriage and the magazine and between the carriage and the drive unit. Numasaki also teaches several detecting means and a control means responsive to detecting means for controlling the carriage and device transferring means so that the data storing device is transferred when the carriage is conveyed to a reference position in front of one of the magazine and the drive unit.

However, we do not find a teaching in Numasaki of the claimed feature of:

when said detecting means detects that the data storing device is not transferred in a prior attempt, the carriage is displaced from said reference position to a new position along said predetermined conveying path and the data storing device is transferred again.

As evidence of this feature, the examiner points to column 3, lines 38-41 and column 4, lines 34-38 of Numasaki. However, reference to these cited portions of the reference

finds only a reference to a pair of detectors for detecting storage of a disk cassette, and a third detector on slider 25 to detect whether or not the insertion direction of the disk cassette is correct, and whether or not the disk cassette has been inserted properly. While the examiner concludes from these teachings that Numasaki detects whether or not the data storing device is transferred in a prior attempt, and if it is not transferred, the carriage is moved to a new position, it is not clear how the examiner reaches this conclusion.

Numasaki teaches nothing about a "prior attempt" to transfer the data storing device and displacing the carriage to a new position to transfer the storing device again if it is not transferred in the "prior attempt." Rather, in Numasaki, when the carrier frame fails to come accurately to a horizontal position because of some variation in a stopping position of the shaft of the pulse motor, or because of vibration or other external forces, because of the shape and construction of catching blade 101 and holding roller 105, the carrier frame is forcibly positioned to the correct horizontal position even if the carrier frame has been slightly dislocated (see column 6, lines 35-62 of Numasaki). Thus, it

does not appear to us that there is any "prior attempt" in Numasaki to transfer the data storing device nor is there a repositioning of the carriage after such a "prior attempt." In Numasaki, there is one attempt at alignment. If the carrier frame is perfectly aligned and slips right into the slot, this is ideal but if the alignment is slightly off, the carrier frame is still inserted, albeit by possibly more force, as the tapered ends of catching blade 101 are easily forced between holding rollers 105 (see Figures 21A and 21B of Numasaki). Numasaki does not make another attempt by displacing the carriage to a new position after a "prior attempt." The process appears to be performed in one, single action.

To the extent the examiner is construing Numasaki's detection of the carrier frame as being slightly off horizontal as a "prior attempt" to transfer the storing device and the forcing of catching blade 101 between holding rollers 105 as a displacement from a first position to a new position (see the difference in position from Figure 21A to Figure 21B in Numasaki) responsive to this "prior attempt," we note appellants' reliance on In re Donaldson Co., 16 F.3d 1189, 29

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USPQ2d 1845 (Fed. Cir. 1994). Appellants cite this case at page 2 of the reply brief and contend that the examiner "has failed to identify any structure in the reference identical to that disclosed by appellants for performing that function, and has failed to identify any structure equivalent thereto for performing that function."

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Since appellants have chosen to rely on 35 U.S.C. § 112, sixth paragraph, to define the claimed control means and detecting means as encompassing only the structure (including the software embodiment depicted in the drawing flowcharts) disclosed in the instant application, and "equivalents thereof," we hold appellants to such an interpretation of the instant claimed elements. Since Numasaki clearly does not disclose the control means "structure," as disclosed by appellants, we will reverse the rejections of claim 1, and all of the claims depending therefrom, under 35 U.S.C. § 102(b) and 35 U.S.C. § 103.

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The examiner's decision rejecting claims 1-12 under 35
U.S.C. § 102(b), and claims 13-29 under 35 U.S.C. § 103 is
reversed.

REVERSED

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ERROL A. KRASS))
Administrative Patent Judge)	
)	
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)	BOARD OF PATENT
MICHAEL R. FLEMING)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
HOWARD B. BLANKENSHIP)	
Administrative Patent Judge)	

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NIKAIDO, MARMELESTEIN, MURRAY & ORAM
Metropolitan Square
655 Fifteenth Street, N.W. Suite 330
G Street Lobby
Washington, D.C. 20005-5701